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(1)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION No.110 /2006

APPLICANTS :

1. Mahesh Kumar Sahu,
   S/o Ramlakhan Sahu,
   aged about 24 years,

2. Ramlakhan Sahu,
   S/o Motilal Sahu,
   aged about 45 years,

3. Deepak Sahu,
   S/o Mahesh Kumar Sahu,
   aged about 02 years,

   Minor Applicant No.3 is represented by Applicant No.1 his Natural Guardian and Father Mahesh Kumar Sahu

   All R/o Village Harra, Jobapara, Thana & Tehsil- Manendragarh, District-Koriya, Chhattisgarh

797/06

Filed on 15/4/06
by Shri Satyendra Sahu
Rs. 15/4/06

VERSUS

NON-APPLICANT :

Kaushilya Sahu,
W/o Mahesh Kumar Sahu,
Aged about 21 Years,
R/o Village Lohari, Thana & Tehsil Manendragarh, District Koriya, Chhattisgarh

CRIMINAL REVISION UNDER SECTION 397/401 OF THE CODE OF CRIMINAL PROCEDURE 1973.

KI-HC-22

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Crr-ev 110/2006 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	19.04.2006 Shri J.K. Gupta, counsel for the applicants. Smt. Usha Chandrakar, counsel for the non-applicant. With the consent of the parties, this Criminal Revision is being heard finally today at the stage of admission. M.Cr.P. No. 343/2006 for stay is therefore, dismissed. This revision is directed against the order dated 24.1.2006 passed by the Additional Sessions Judge, Manendragarh, Distt. Korea in Criminal Revision No. 254/2005 whereby the order dated 23.8.2005 passed by the Sub Divisional Officer, Manendragarh in Miscellaneous Criminal Case No. 8/2005 awarding custody of the minor male child to the father i.e. applicant No. 1 herein was set aside. Brief facts are that the applicant No. 1 herein was married to the non-applicant on 20.5.2002. A male child was born on 31.3.2003. Thereafter upon a marital discord, the non-applicant left the matrimonial home on 23.4.2005. She moved an application on 29.8.2005 under Section 125 Cr.P.C. for maintenance on the ground that she was unable to maintain herself. She also moved an application before the Sub Divisional Officer, Manendragarh under Section 97 Cr.P.C. for issuance of a search warrant on the ground that her minor male child Deepak Sahu was wrongly confined by the applicant No. 1 herein. The learned Sub Divisional Officer, Manendragarh vide order dated 23.8.2005 held that non-applicant herein though the natural guardian of the minor child, was unable to maintain the child and therefore he ordered that the applicant No.1 herein shall retain custody of the child. It was also mentioned therein that the applicant No. 1 herein had not kept the child	

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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under wrongful confinement but was maintaining the child as a lawful guardian.

Being aggrieved by the aforesaid order, the non-applicant herein preferred Criminal Revision No. 254/2005 before the learned Additional Sessions Judge, Manendragarh who vide order dated 24.1.2006 set aside the order of the Sub Divisional Officer dated 23.8.2005 awarding custody of the child to the mother. Learned Additional Sessions Judge did not record a finding that the father i.e. applicant No. 1 herein was keeping the child in wrongful confinement.

The only contention raised by the learned counsel appearing for the applicant is that the non-applicant No. 1 is the natural guardian of the child being his father and was properly maintaining the minor child. He placed reliance on *Yudhistar Mohanand Vs. Dalimba Mohanand* reported in **1990 Cr.L.J., Page 1085** while arguing that the question as to the custody of the minor child has to be decided by the Civil Court and cannot be gone into in an application under Section 97 of the Code of Criminal Procedure. It was also urged that the non-applicant was a disabled person and was not even able to look after her son. As mentioned by her in her own application under Section 125 Cr.P.C., she had admitted that she was unable to maintain her own self. On the other hand, Smt Usha Chandrakar, learned counsel appearing for the non-applicant argued that the mother being the natural guardian of the minor child was entitled to the custody of the child as rightly held by learned Additional Sessions Judge.

Having heard the rival contentions, I have gone through the record. Section 97 of the Cr.P.C. has a limited scope. What is relevant thereunder is only whether the child was wrongfully confined by the

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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	father. No such finding has been recorded by both the Courts below. Therefore, the learned Additional Sessions Judge wholly erred in setting aside the order dated 23.8.2006 passed by the learned Sub Divisional Officer, Manendragarh. The question of entitlement to the custody of the minor child is not germane in an application under Section 97 Cr.P.C. A perusal of the record also shows that the Non-applicant No. 1 is a disabled person and is unable to maintain herself. In view of what has been stated above, since there is absolutely no material to show that the applicant No. 1 had kept the minor child under wrongful confinement, the impugned order dated 24.1.2006 passed by learned Additional Sessions Judge; Manendragarh is *per se* illegal and liable to be set aside. In the result, this criminal revision is allowed. The impugned order dated 24.10.2006 passed by the learned Additional Sessions Judge is set aside while affirming the order dated 23.8.2005 passed by the learned Sub Divisional Officer, Manendragarh. Sd/- Dilip Raosaheb Deshmukh Judge	

Priya